IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.4420 OF 2006.

Sinhgad Technical Education Society,
Registered under Society's Registration Act, 1860
having its registered office at S.No.44/1, Vadgaon (BK),
Pune-411 041
Through its founder - President
Shri M.N.Navale .. Petitioner

versus

1] Dental Council of India
Aiwan - E - Galib Marg,
Kotla Road, New Delhi 110002

2] Union of India
Through, The Secretary,
Ministry of Health & Family Welfare, Govt. of India,
Nirman Bhawan,
New Delhi - 110 011.

3] State of Maharashtra
Through its Principal Secretary, Dept. of Medical Education & Administration
Mantralaya, Mumbai 400 032

4] Maharashtra University of Health Sciences,
Mhasrul, Dindori Road,
Nashik - 422 004

5] The Director of Medical Education & Research
Maharashtra State,
St.George's Hospital Compound
Govt. Dental College Building, Near Chatarapati Shivaji Terminus (CST),
Mumbai - 400 001. .. Respondents.

Mr.C.J.Sawant, Sr.Counsel with Mr. Uday Lalit with Mr.Nitin Dhumal, Advocates for the petitioner.

Mr.Ravi Kadam, Advocate General, with Mr.Nitin P. Deshpande, AGP, for Respondent No.1.

Ms.Anamika Malhotra i/by Mr.S.S.Sarkar for Respondent No.2.

Mr.A.A.Kumbhakoni, Associate Advocate General with Mr.Vinay Sonpal, AGP, for Respondent Nos. 3 and 5.

Mr.R.V.Govilkar, Advocate for Respondent No.4

CORAM : B.H.MARLAPALLE &
NARESH H. PATIL, JJ.

DATED : September 08, 2006.

ORAL ORDER [PER B.H.MARLAPALLE, J]

1. Petitioner is a society registered under the Society's Registration Act, 1860 and also a public charitable trust registered under the Bombay Public Trust Act, 1950 and it claims to be in the vocation of running private educational institutes of lower, higher and professional learnings in four different estates around Pune. On or about 19th August 2005 it had applied to Respondent No.1 for recommendation to the Central Government to grant permission to start a Dental

College in its campus at Vadgaon (BK) spread over about 65 to 70 acres and 11.5 acres land is reserved for the purpose of Dental College. In this petition filed under Articles 226 and 227 of the Constitution of India, it prays for quashing and setting aside the decision dated 22.06.2006 taken by the Respondent No.1 refusing to issue necessary recommendation to the proposal submitted by it for starting a new dental college. By the order dated 25th July 2006 ad interim relief in terms of prayer clause (c) was granted by this Court and the same prayer clause (c) reads as under :-

> "pending the hearing and final disposal of this Petition the respondents be directed to include the name of the Petitioner's institute in the list of Centralized Admission process for the year 2006-2007 for Dental College"

2. The said order granting ad-interim relief has been challenged by the present Respondent No.1 in SLP (Civil) No.12703/2006 and, in the said SLP the following order came to be passed by Their Lordships on 14th August 2006 :-

> " List this matter on 21st August, 2006. We may, however, clarify that this order shall not in any manner preclude the High Court from further hearing and passing order in the writ petition."

. We are informed that the said SLP is listed before the Apex Court today. Under these circumstances, we have proceeded to hear the petition so as to decide it finally at the admission stage itself, more so when the Respondent No.1 as well as Respondent Nos. 3 and 5 have filed their replies. On behalf of Respondent No.4 We have heard the oral arguments of Mr.Govilkar, the learned counsel.

3. It appears from the record that some time in the month of December 2003 the petitioner submitted a proposal for establishment of a new dental college in the academic year 2004-05 in its Vadgaon(BK) Campus near Pune City and, on 29th December 2003 the Respondent No.4-University conveyed its decision to the State Government not to give permission to the petitioner to start the new dental college for the academic year 2004-05 and it recommended that under Section 64(5) of the Maharashtra University of Health Sciences Act, 1998, the permission be refused. However, at some stage, the Government of Maharashtra was convinced to take favourable decision and consequently on 29th October 2004 Essentiality Certificate came to be issued in

favour of the petitioner. Consequently, the petitioner submitted its proposal to Respondent No.1 on or about 19th August 2005 as noted earlier.

4. We must also note at this stage that the Essentiality Certificate was one of the requirements for submitting the proposal to the Respondent No.1. The Respondent No.1, in turn, forwarded the said proposal to the Government of India on 4th January 2006. On 12th January 2006 the petitioner received communication from the Respondent No.1 for verification of land documents etc. and the same was complied with by the petitioner by its letter dated 21st January 2006. Another communication dated 28th February 2006 was also addressed by the Respondent No.1 to the petitioner for furnishing some more documents in respect of the land and that was so done vide letter dated 25th March 2006 through the petitioner's advocate. The petitioner was called upon to submit revised Essentiality Certificate vide communication dated 19th May 2006 under the amended Regulation of 2006 which had come into force some time in February/March 2006. Vide communication 23rd May 2006 the petitioner

forwarded the revised Essentiality Certificate issued by the State Government through the Department of Medical Education and Drugs. The Respondent No.1 appointed the inspectors for causing visit to the premises of the petitioner and a team of two inspectors i.e. Dr.A.K.Kakade, Professor from Mumbai and Mr.S.Ramchandran, Professor from Chennai visited the petitioner's premises on 13th and 14th June 2006. Vide its communication dated 16th June 2006, the Respondent No.1 informed the petitioner, its decision not to recommend to the Central Government to grant the permission to establish a new dental college by name Sinhgad Dental College and Hospital, Vadgaon (BK) Pune, with 100 seats on account of the following reasons/deficiencies:-

1] The college authority be asked to furnish the teaching experience of Dr.Karandikar shown as Principal from 11.04.2005 to 13.04.2006;

2] Dr.Jayshree Dikshit, Professor in Prosthodontics is full time practitioner

in Mumbai;

3] Dr.Varsha Kudale, Reader, Conservative Dentistry is not accepted since she does not have requisite teaching experience for the post of Reader;

4] Dr.Usha Kale, Professor (Anatomy) is not accepted since she is superannuated; and

5] There is deficiency of 4 lecturers with P.G. qualifications in Department of Anatomy - 3 and Physiology - 1.

5. The petitioner was called upon to remove the deficiencies within three days failing which, the proposal would be returned to the Government of India for disapproval. The petitioner replied on 20th June 2006 and pointed out that due steps were taken to remove the deficiencies pointed out vide communication dated 16th June 2006 and in spite of the response of this communication dated 20th June 2006, the Respondent No.1 informed to the Government of India, Ministry of Health and Family Welfare on 22nd June 2006 its

recommendation against the petitioner and in the following words :-

> "The Executive Committee does not recommend to the Central Government to grant its permission to establish a new Dental college in the name of Sinhgad Dental College & Hospital Vadgoan (BK), Pune, Maharashtra with 100 seats due to following deficiencies :-

A. Dr.Karandikar shown as Principal is full time private practitioner at Aurangabad;

B. Dr.Jayshree Dixit, Professor in Prosthodonties is full time practitioner in Mumbai;

C. Dr.Varsha Kodale, Reader, Conservative Dentistry is not accepted since she does not have requisite teaching experience for the post of Reader; and

D. Clinical material is inadequate."

6. Let it be noted at this stage itself that

the recommendation communicated to the petitioner on 16th June 2006 regarding the deficiencies is at variance in some respect as compared to the recommendation communicated to the Government of India on 22nd June 2006 and more particularly in respect of Dr.Usha Kale and deficiency of 4 lecturers with PG qualifications in the Department of Anatomy and Physiology. In place of these two deficiencies, an additional deficiency "Clinical material is inadequate" was set out in the recommendation to the Government of India forwarded on 22nd June 2006 and, the said decision has been impugned in this petition.

7. The Respondent No.1, by filing its reply, has pointed out that subsequently on 9th July 2006 another recommendation in place of earlier one dated 22nd June 2006 was forwarded to the Government of India pursuant to the meeting of the Executive Committee of the respondent No.1 held on 9th July 2006 itself at New Delhi which considered the letter dated 20th June 2006 submitted by the petitioner. The said recommendation reads thus :-

"The Executive Committed does not

recommend to the Central Government to grant its permission to establish a new Dental College in the name of Sinhgad Dental College & Hospital Vadgaon (BK), Pune, Maharashtra with 100 seats due to the following deficiencies :-

1. Dr.Karandikar shown as Principal is full time private practitioner at Aurangabad;

2. Dr.Jayshree Dixit, Professor in Prosthodonties is full time practitioner in Mumbai;

3. Dr.Usha Kale, Professor, Anatomy is not accepted since she was present at Dr.Vithalrao Vikhe Patil Foundation Loni on 29.05.2006;

4. Dr.Dnyandeo Kisan Chopade, Professor, Anatomy is not accepted since he was present at People’s College of Medical Sciences & Research, Bhopal on 17.04.2006."

5. Clinical material is inadequate. The

records submitted by the applicant does not shown any seal of the college on any page."

Here again there is a variance between the two recommendations viz. 22nd June 2006 and 9th July 2006. The name of Dr.Varsha Kudale, Reader, does not found place in the recommendation of 9th July 2006. Similarly, the name of Dr.Dnyandeo Kisan Chopade, which did not figure in the recommendation dated 22nd June 2006, has been added in the recommendation dated 9th July 2006. On 7th August 2006 the Government of India finally communicated to the petitioner that on the basis of the recommendations submitted by Respondent No.1, its proposal was not accepted. As the petition was filed prior to 5th July 2006, the communication dated 9th July 2006 and 7th August 2006 could not be challenged by the petitioner.

8. In short, the petitioner’s case before us is that it has complied with all the requirements in terms of providing faculty members, clinical infrastructure and all other facilities like building, laboratory, hostels for both boys and

girls separately and has invested a huge amount of about Rupees twenty five crores to set up a new dental college which is ready to start in the current academic year with 100 seats in the 1st year of BDS course and the decision of the respondent No.1 not to recommend its case to the Union of India is illegal, arbitrary, capricious and, is otherwise, not in the interest of students community as well as Maharashtra State which would loose 100 seats for admission to BDS course.

9. The learned Senior Counsel appearing for the petitioner, in his exhaustive arguments, has taken us through the sequence of events so as to point out that every action of the Respondent No,.1 was almost at the eleventh hour and by the time the impugned communication dated 22nd June 2006 was received, the admission process to the 1st year's BDS course was already in progress. He also stated before us that the petitioner was desirous of filling in 100 seats through CET conducted by the association of the private medical colleges rather than going through the CET conducted by the State Government for the current academic year. It was further submitted

that granting admission to the petitioner for the new dental college for this academic year would not cause any inconvenience or injustice to the students who have already been admitted in other courses and colleges and public interest would be better served if the petitioner's proposal is accepted by the respondent No.1 and recommended to the Government of India for starting the dental college during this academic year itself.

10. The learned Senior Counsel appearing for the respondent No.1, on the other hand, pointed out that the decision of the respondent No.1 is based on the inspectors' visit report dated 14th June 2006 and the decision does not suffer from any infirmities. He also submitted that the decision taken against the petitioner is not an all time event and, if the petitioner has now taken steps to comply with the requirements in all respects to start the new college, the respondent No.1 is willing to depute the inspectors' team afresh to visit the campus of the petitioner and inspect the facilities that now are available including the teaching and clinical staff.

. The learned Associate Advocate General for the State has placed before us the present position regarding the admission in the dental colleges and pointed out that 30th September 2006 is the last date for filling in the available vacancies. He submitted that the Essentiality Certificate was issued to the petitioner even in the revised form in response to the application dated 19th May 2006 but at the same time there would be number of difficulties in admitting the students in the petitioner's college for the current academic year. He also submitted that the admissions which have received finality may be unsettled in some cases if the merit has to be followed. In case the admissions are granted from amongst the students who are not admitted to any course in medical sciences and are waiting for such admissions, merit will be sacrificed.

. The learned counsel for Respondent No.4-University has referred to the scheme of Sections 64 to 66 of the Maharashtra University of Health Sciences Act, 1998 and pointed out that unless, the Respondent No.4- University grants affiliation to the petitioner's new dental college after it is sanctioned by the Central

Government no admission could be undertaken in the first year of BDS course and, the process of granting affiliation cannot be made time bound program. At the same time, the decision on affiliation, taken by the University under Section 65 of the Act, is final, and, therefore, it has to go through different stages of decision making. It was for these reasons he expressed his apprehensions regarding the feasibility for admitting any student in the petitioner's new dental college during the current academic year by keeping in mind the dead-line of 30th September 2006 (end of this month).

11. After considering the rival submissions placed before us in addition to the documents along with replies filed as well as the scheme of Sections 64 to 66 of the Maharashtra University of Health Sciences Act, 1998, We are of the view that the petitioner's case will have to be considered in four different stages viz.;

(a) The permission of the State Government under Section 64 of the Maharashtra University of Health Sciences Act resulting into issuance of the

Essentiality Certificate;

(b) Permission to be granted by the Union of India to start a new dental college on the recommendations of the Respondent No.1;

(c) Affiliation to be granted by the Respondent No.4 - University under Section 65 of the Maharashtra University of Health Sciences Act, 1998; and

(d) Feasibility for admitting the students to the new dental college in the current academic year.

12. We shall at the first instance examine the 2nd stage which has been argued at length before us i.e. recommendation of the Respondent No.1 to the Union of India stating that on account of the deficiencies, the petitioner's college cannot be granted permission during the current academic year. Respondent No.1 has placed before us the inspector's report dated 14th June 2006. It has been signed by both the inspectors. The deficiencies pointed out in the

said report in respect of the teaching faculty are as under :-

A. Dental Faculty.

I. Readers

Dr.(Mrs) Varsha Kudale, M.D.S., Conservative Dentistry, appointed as Reader, has the total experience of 02 years and 04 months and, therefore she does not meet the required teaching experience for Reader;

Dr.Leena Sadar, M.D.S., Prosthodontics, has the total teaching experience of 03 years and 06 months. But no Relieving Order and Experience Certificate from Previous College was submitted. She could not submit any proof of residence at Pune.

II. Lecturers

24 lecturers have been appointed, out of which, 05 are MDS qualified and 12 are

BDS qualified;

B. Medical Faculty

i) Dr.(Mrs.) Usha Kale who is shown as the Professor and Head, MS(Anatomy) has completed 65 years of age;

ii) Dr.Dnyandeo K Chopade, Prof. MS(Anatomy) has the total teaching experience of 07 years and 09 months and hence not qualified for the said post.

iii) 04 Lecturers in the Department, out of which, 01 is MS (Anatomy) and 03 are MBBS.

Clinical Infrastructure in Department of Anatomy & Histology.

No cadavers were present in the department.

Only one set of dissection was available.

Histology laboratory has 25 tables to accommodate 50 students.

13. The qualifications for the posts of Principal/Professor, Readers and Lecturers have been laid down by the Respondent No.1 in its Regulations. Similarly the requirements of teaching staff are in dental faculty and medical faculty at the Under-graduate levels under Regulation No.6(2)(j) are prescribed at minimum requirements of dental faculty for 100 admissions as shown for the 1st year of BDS are as under:-

Professor	-	2
Reader	-	3
Lecturer	-	16

(One of the two professors could be the principal)

Medical Teaching Staff for 100 admissions :-

Year	subject	Intake and Designations		
		Prof.	Reader	Lecturer.

1	Anatomy	--	01	04
1	Physiology	--	01	02
1	Biochemistry	--	01	02
			03	08

(A). The qualifications for the post of a Principal/Professor are :-

A BDS Degree of an Indian University or an equivalent qualification with post graduate qualification in the subject and with 5 years teaching experience after the post-graduate qualification as Reader.

However, for the purposes of teaching Oral Anatomy and Histology, Dental Materials, and Community Dentistry a candidate with BDS or equivalent qualification with 10 years teaching experience in that subject may be considered for the post of a Reader till such time Post-graduate training facilities in this subject is available in India. However, such a candidate without Post-graduate qualification cannot be considered for the post of a Professor.

(B). The qualifications for the post of a Reader :-

A BDS degree of an Indian University or an equivalent qualification with Post-graduate qualification in the subject and with 3 years teaching experience after Post-graduation in the subject of specialisation.

(C). The qualifications for the post of a Lecturer :-

		A recognized BDS degree of an Indian University or an equivalent qualification with 6 months experience as House-Surgeon.

The qualifications for the Medical Staff are :-

(A).	Professor/ Readers.	As prescribed by the Medical Council of India for such posts. Note :- BDS with post-graduate qualification in the subject should be preferred.

14. If we examine the academic requirements for these various posts with available data placed before us, we have no doubt in our mind that Dr.Varsha Kudale was not qualified for being appointed as a Reader. It was submitted that she had worked as a Reader for some time with Bharati Vidyapeeth, Pune University and it is noted that from 1.5.2003 she was not working with the said institution. But she was working as a Reader under that institution from 1.08.2001 to 30.4.2003. As far as Dr.Satish Karandikar is concerned, his detailed bio-data indicates that he has a total experience of 16 years and six

months and more than 10 years as a Reader. This would go to show that he otherwise fulfils the requirements for the appointment to the post of Professor/Principal. However, on the issue of his being a practitioner at Aurangabad as has been noted by the Respondent No.1 in the impugned recommendation, his bio-data clearly shows that he is practising at Aurangabad while he was also a faculty member under the Dental Colleges at Aurangabad and Loni in Ahamadnagar District etc. It is not clearly made out by this bio-data, whether he was a part time practitioner or full time practitioner though he states that he was practising as a Private Dentist with the permission of the respective managements. In our opinion, this is an issue which will have to be gone into by the Respondent No.1 which ought to have all the information on its command. After all the Respondent No.1 must be fully satisfied that the college has a qualified full time principal and not the one who keeps hopping from place to place. His bio-data further shows that from 02.09.2002 to 11.04.2005, he was working as the Professor and Head at the Rural Dental College and Hospital at Loni - Dist. Ahamadnagar. He admits that he was a private

practitioner at Aurangabad. The petitioner had issued appointment order to him on 13.04.2006 for the post of Professor and Head. He was interviewed on 13.04.2006, was appointed on 13.04.2006 and joined on the same date. He was yet issued another appointment order dated 27.05.2006 for the post of Principal and he joined on 29.05.2006 as per the said bio-data placed on record. All these issues do require investigation/verification by the Respondent No.1.

. So far as Dr.Jayashree Dixit is concerned, she is a full time practitioner in Mumbai as per the Respondent No.1. Her bio-data, placed before us, shows that from April 1974 to June 1987 she worked as a Lecturer/Astt.Professor/Reader (Full Time) with Nair Hospital, Dental College, Mumbai. From 1994 to December 1997 again she was the Professor & Head of the Department under different colleges. From April 1999 to April 2006 she was again the Professor and Head of the Department. She claims to have worked as a Dean/Principal in MGM Dental college Navi Mumbai from July 2002 to July 2004. This bio-data, placed before us, does not

indicate that she was a full time practitioner in Mumbai. It is not known how the Respondent No.1 termed the opinion that Dr.Jayshree Dixit was a full time practitioner.

. So far as Dr.Usha Kale is concerned, we are informed that she was terminated from the services by the order dated 25th May 2006 and as regards Dr.D.K.Chopade, though the copies of his appointment letters are placed before us, but we are not in a position to ascertain, whether he meets the required qualifications as well as experience for the post of Reader and, so far as contention of Respondent No.1 that he was seen in Bhopal on 17th April 2006, Respondent No.1 has placed before us the Certificate dated 4th July 2006 issued by Sarvajanik Jankalyan Parmarthik Nyas that he was working at Peoples College of Medical Sciences & Research Centre, Bhopal as a Associate Professor from 27.5.2005 to 27.5.2006 and as per the petitioner, he had joined the petitioner's college after 27.5.2006. This needs to be verified by the Respondent No.1. After all the new college must have a regular faculty and not the faculty on daily wages for the sake of compliances during the Inspectors' visit.

15. On the detailed analysis, we do find that there were certain deficiencies pointed out by the Inspectors and also noted even after the compliances were sent by the petitioner on 20th June 2006 as well as 23rd June 2006 in terms of the faculty as well as infrastructure. It will not be possible for us to judge, whether these deficiencies were material or even minor so as to ignore and, the Respondent No.1 is the best judge in that regard. But the college must have two professors, three readers and sixteen lecturers in the dental faculty and three readers and eight lecturers in the medical faculty. The petitioner could not meet this requirement. There is not a single advertisement released by the petitioner for filling in the posts of Principal/Professors, Readers and Lecturers in dental as well as medical faculties. Despite this it is claimed that the faculty posts were filled in. We are rather surprised.

16. The learned senior counsel for the petitioner also referred to delayed action by the Respondent No.1. However, the Amended Regulation i.e. the Dental Council of India (Establishment

of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) (Amendment) Regulation 2006 published in the Notification dated 16th January 2006 indicates the revised schedule as under :-

Sr.No.	Stage of Processing	Time Schedule for BDS	Time Schedule for MDS
1.	Receipt of applica--tions by the Central Government	From 1st Aug. to 30th Sept. (Both days inclusive) of any year	From 1st May to 30th June. (Both days inclusive) of any year.
2.	Forwarding of applications by the Central Govt. to the Dental Council of India for technical scrutiny.	Upto 31st Dec.	Upto 31st July
3.	Recommendation of DCI to the Central Govt.	Upto 15th June	Upto 28th Feb.
4.	Issue of Letter of Permission by Central Government	Upto 15th July	Upto 31st March

The above Schedule shows that the recommendation of Respondent No.1 for BDS should be submitted to the Government of India by 15th June 2006 and in

the instant case it appears to have been submitted between 20th June 2006 to 22nd June 2006. Thus, the delay is about one week at the most and this cannot be a reason to vitiate the impugned recommendations.

17. Now coming to the 1st stage of the Essentiality Certificate, we have noted from the file submitted before us by the State Government that the Respondent No.4 - University did not recommend the case of the petitioner, as noted herein above, for the academic year 2004-05 and, therefore, the decision was taken at the Secretary's level on 1st February 2004 to the effect that the petitioner's case could not be considered for granting permission under Section 65 of the Maharashtra University of Health Sciences Act, 1998 and it should be informed to submit a fresh proposal. But on 2nd October 2004, the Principal Secretary put up a short and cryptic note for reconsideration and perhaps to meet the requirements of the Proviso below Section 64 (5) of the Act and this was accepted/approved by the Hon'ble Chief Minister. However, on account of the code of conduct the decision could not be communicated to the

petitioner. A new Ministry headed by a new Chief Minister was installed in the State after 12th October 2004 and, therefore, the petitioner's proposal was again placed before the new Government and on 29th December 2004 the Minister for Medical Education approved and directed to issue Essentiality Certificate. But the proposal was not placed before the Hon'ble Chief Minister as is clear from the file. In response to the application dated 19th May 2006 for issuance of Essentiality Certificate in the Revised Form, the decision was taken in favour of the petitioner on 20th May 2006, but at the level of the Principal Secretary only presumably on the ground that the application was an extension of the earlier certificate issued on 29th October 2004. This revised proposal was not placed either before the Minister for Medical Education or to the Hon'ble Chief Minister. We certainly find fault with the government's action in issuing essentiality certificate on 20th May 2006 or 29th May 2006 and because it was not in keeping with the scheme of the Maharashtra University of Health Sciences Act, 1998, more so when the petitioner had not submitted any fresh proposal to the Respondent No.4 - University for the year 2005-06 or

2006-07.

18. We produce the Scheme of Section 64 as under:-

> 64. (1). The University shall prepare a perspective plan for educational development for the location of institutions of higher learning in a manner ensuring equitable distribution of facilities of Health Sciences Education having due regard, in particular, to the needs of unserved and under developed areas within the jurisdiction of the University. Such plan shall be prepared by the Academic Council and shall be placed before the Senate through the Management council and shall be updated every five years.
>
> (2). No application for opening a new college or institution of higher learning which is not in conformity with such plan, shall be considered by the University.

(3). The Management seeking permission to open a new college or institution of higher learning shall apply in the prescribed form to the Registrar of the University before the last day of October of the year preceding the year from which the permission is sought.

(4). All such applications received within the aforesaid prescribed time-limit shall be scrutinised by the Planning Board and be forwarded to the Government with the approval of the Management Council on or before the last day of December of the year, with such recommendations (duly supported by relevant reasons) as are deemed appropriate by the Management Council.

(5). Out of the applications recommended by the University, the Government may grant permission to such institutions as it may consider right and proper in its absolute discretion, taking into account the Government's budgetary resources, the suitability of the

managements seeking permission to open new institutions and the State level priorities with regard to location of institutions of Health Sciences learning:

Provided however that, in exceptional cases and for the reasons to be recorded in writing, any application not recommended by the University may be approved by the State Government for starting a new college or institution of Health Sciences learning.

(6). No application shall be entertained directly by the Government for the grant of permission for opening a new college or institution of Health Sciences learning.

. Subsection (3) clearly speaks that the Management seeking permission to open a new college has to approach the Respondent No.4 - University for every academic year before the last day of October of the preceding year. Under subsection (5) the University has to recommend to the State Government for granting permission in

its discretion and by taking into account other factors. However, the Proviso states that in exceptional cases and for the reasons to be recorded in writing, any application not recommended by the University may be approved by the State Government for starting a new college. We doubt whether this requirement was satisfied by the petitioner for the years 2005-06 and 2006-07. The file placed before does not indicate so.

. The petitioner's original application for Essentiality Certificate as we have noted earlier was for the academic year 2004-05 and there is nothing on record to show that for the subsequent academic years of 2005-06 and 2006-07 fresh proposal was submitted by the petitioner to the Respondent No.4 - University and unless such a proposal is submitted and forwarded by the University to the State Government, Essentiality Certificate cannot be issued.

19. There is another facet of the decision taking process resulting into issuance of revised Essentiality Certificate. The decision was finalised at the level of Principal Secretary

only. The revised format of the Essentiality Certificate has certain important contents and they are as under :-

(a). The Sinhgad Technical Education Society, Pune had applied for establishment of a dental college at Vadgaon (Budruk) Dist.Pune. On careful consideration of the proposal, the Government of Maharashtra has decided to issue this Essentiality Certificate to the applicant for the establishment of a dental college with 100 seats;

(b). It is further certified that in case the applicant fails to create infrastructure for the dental college as per Dental Council of India norms and fresh admissions are stopped by the Dental Council of India, the State Government shall take over the responsibility of the students already admitted in the college with the permission of the Central Government. This certificate is valid upto 31st December 2008."

On account of these two conditions, it was imperative, in our opinion, that the application dated 19th June 2006 submitted by the petitioner was placed before the Minister for Health Education as well as the Hon'ble Chief Minister, Maharashtra State and, the decision taken by the Principal Secretary cannot be termed as the decision of the State Government. The significance of Essentiality Certificate has been duly dealt with in the case of **State of Maharashtra v/s Indian Medical Association and others reported in (2002) SCC 589**.

20. On the third aspect of affiliation, having regard to the scheme of Section 65 of the Maharashtra University of Health Sciences Act, there is a long way for the petitioner to cross and, we agree with the learned counsel for the University that it would not be possible to admit any students during this academic year in the new dental college even if the Respondent No.1 recommends in favour of the petitioner after fresh inspection before the end of this month. On the feasibility of admission during the current academic year, we fully agree with the

apprehensions expressed on behalf of the State Government and we also believe that the settled admissions may be unsettled if the merit has to be followed for admissions in the new dental college and if the students are admitted from the existing waiting list, the merit will be a casualty, undoubtedly.

21. In the premises, We do not find any reason to interfere with the impugned decision of the Respondent No.1 and it would be appropriate that the petitioner approaches Respondent No.1 afresh by giving all the details of the faculties who have been appointed recently in the month of June/July 2006. Some of the names mentioned are Dr.K.V.Muthe appointed as Principal on 11th July 2006; Dr.A.K.Barua, appointed as Professor in place of Jayashree Dikshit with effect from 17th July 2006. The learned senior counsel for the Respondent No.1, on taking instructions, has stated before us that Respondent No.1 will take necessary steps as early as possible to cause fresh inspection regarding requirements of the faculty as well as the infrastructure of the proposed new dental college of the petitioner. However, we would not set out any time bound

program and we leave it to the decision of the Respondent No.1. More so, when we have recorded our findings that the admissions to the new dental college cannot be undertaken in the current academic year, if the last date of admission is 30th September 2006 and as per Section 65(6) of the Maharashtra University of Health Sciences Act, 1998, no students shall be admitted by the college or institution unless the first time affiliation is granted by the Respondent No.4 - University to the new dental college.

22. Hence this petition fails and the same is hereby rejected summarily. Ad interim order granted on 25th July 2006 is hereby vacated.

[NARESH H. PATIL, J] **[B.H.MARLAPALLE, J.]**